

September 10, 2003

**By Courier**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Ave., NE  
Suite 110  
Washington, DC 20002

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SEP 10 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

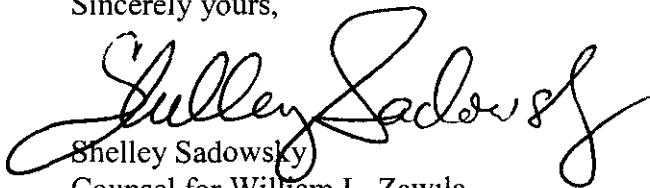
Re: **EB Docket No. 03-152**  
**William L. Zawila, et al**

Dear Madam Secretary:

On behalf of William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a Lindsay Broadcasting and Western Pacific Broadcasting, Inc., parties in the above-referenced proceeding, I submit herewith an original and six copies of a Joint Opposition to Petition for Leave to Intervene.

Please direct any questions concerning this matter to the undersigned.

Sincerely yours,



Shelley Sadowsky  
Counsel for William L. Zawila,  
Avenal Educational Services, Inc.  
Central Valley Educational Services, Inc.  
H.L. Charles d/b/a Ford City Broadcasting,  
Linda Ware d/b/a Lindsay Broadcasting  
Western Pacific Broadcasting, Inc.

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cc: As on Service List attached to Joint Opposition

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**SEP 10 2003**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of	)	<b>EB Docket No. 03-152</b>
	)	
WILLIAM L. ZAWILA	)	<b>Facility ID No. 72672</b>
	)	
Permittee of FM Station KNKS, Coalinga, California	)	
	)	
AVENAL EDUCATIONAL SERVICES, INC.	)	<b>Facility ID No. 3365</b>
	)	
Permittee of FM Station KAAX, Avenal, California	)	
	)	
CENTRAL VALLEY EDUCATIONAL SERVICES, INC.	)	<b>Facility ID No. 9993</b>
	)	
Permittee of FM Station KAJP, Firebaugh, California	)	
	)	
H.L. CHARLES D/B/A FORD CITY BROADCASTING	)	<b>Facility ID No. 22030</b>
	)	
Permittee of FM Station KZPE, Ford City, California	)	
	)	
LINDA WARE D/B/A LINDSAY BROADCASTING	)	<b>Facility ID No. 37725</b>
	)	
Permittee of FM Station KZPO, Lindsay, California	)	
	)	
In re Application of	)	
	)	
WESTERN PACIFIC BROADCASTING INC.	)	<b>File No. BR-19970804YJ</b>
	)	<b>Facility ID No. 71936</b>
For Renewal of License for AM Station KKFO,	)	
Coalinga, California	)	

**TO: The Honorable Arthur I. Steinberg  
Administrative Law Judge**

## **JOINT OPPOSITION TO PETITION FOR LEAVE TO INTERVENE**

William L. Zawila ("Zawila"), Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a Lindsay Broadcasting and Western Pacific Broadcasting, Inc. (collectively with Zawila, referred to as the "Parties" or "Zawila, et al."), by their undersigned counsel, hereby jointly oppose the Petition for Leave to Intervene (the "Petition") filed by Richard B. Smith ("Smith") on August 27, 2003, in the above-captioned proceeding.<sup>1</sup> In support hereof, the following is shown:

1. A petitioner seeking to intervene in a Commission revocation hearing, among other things, must set forth his interest in the proceedings and show how his participation will assist the Commission in the determination of the issues in question. *See* §1.223(b) of the Commission's Rules. Moreover, in connection with intervention in revocation proceedings, the Commission has held:

It would seem reasonable, particularly in a prosecutory-type proceeding where the agency has the burden of proof, to require a substantial showing of special circumstances in order to justify intervention by parties who are otherwise strangers to the proceeding. Such showing would require that the intervenors raise substantial issues of law or fact which have not or would not otherwise be properly raised or argued; and that the issues be of sufficient import and immediacy to justify granting the petitioner the status of a party.

*Victor Muscat, et al*, 22 R.R. 2d 1001, 31 FCC 2d 620, 621 (1971). Judged against this exacting standard, Smith's showing fails to meet any of the foregoing criteria to warrant intervention in this case. Indeed, Smith not only fails to demonstrate any "substantial

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<sup>1</sup> The instant Joint Opposition is filed on this date pursuant to the Presiding Judge's September 9, 2003 action granting the Parties' Motion for Extension of Time to file the Joint Opposition.

showing or special circumstances” as to why intervention should be awarded him, but also, his claim to party status hangs on a most tenuous thread.

2. The gist of Smith’s argument is that party status should be conferred upon him because if the construction permit held by Zawila for Class B FM Station KNGS (Channel 261; 100.1 MHz), Coalinga, California, remains in full force and effect, Smith would be prevented from seeking to increase the power of his first adjacent (Channel 262; 100.3 MHz) Class A FM station, KMAK(FM), Orange Cove, California, from its current 3 kw to 6 kw. See Petition, ¶2; Statement of Richard Smith attached to Petition, ¶6. If, however, the KNGS construction permit is revoked, according to the Petition, “that impediment to the possible improvement of ... Smith’s station could be eliminated.” (emphasis added). Petition, ¶2. In other words, if there is a favorable outcome for Zawila in this proceeding, (and assuming that the transmitting facilities of KMAK cannot be moved, the KMAK antenna cannot be changed from omnidirectional to directional, or other steps to achieve the desired power increase cannot be taken<sup>2</sup>), Smith clearly will be in no worse a position than he has been in since KMAK was originally licensed in 1990.<sup>3</sup> And, if the KNGS permit is ultimately revoked, in the Petition’s own words, it is only possible, not certain, that KMAK might increase its

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<sup>2</sup> It is noteworthy that Smith has not provided any technical showing whatsoever to support his claim that but for the existence of adjacent channel KNGS, KMAK would be able to increase power

<sup>3</sup> According to the Commission’s online database (CDBS), Station KMAK was licensed on December 26, 1990 See File No BLH-19900911KB.

power by 3 kw.<sup>4</sup> Clearly, no direct economic harm is imminent for Smith if KNKS remains viable. Rather, he will simply have to accept nothing worse than the status quo. In short, Smith's claim to party status is both ill conceived and illusory. He is really nothing more than an interloper on mission to bring down Zawila for his own hoped for private gain, as opposed to the paramount public interest. Party status, however, requires far more.

3. Furthermore, notwithstanding the fact that Smith "believes that he will be able to assist materially in this hearing" (Petition at ¶3), the Petition offers no showing of the material assistance he will provide. While he may have provided information in the past that prompted the Commission's investigation of Zawila et al., Smith makes no showing, much less any claim, that he possesses any material information that the Commission does not already have. Indeed, he expressly states that he does not propose to add any issues with respect to Mr. Zawila. Petition at ¶4. Rather, just like the unsuccessful would-be intervenor in *Revocation of License of Western (WSTC-FM, Stanford, CT)*, 26 RR 2d 359 (1973), Smith "has not shown or alleged that, if not allowed to intervene, important issues of fact or law will not be adequately raised or argued." 26 RR2d 359 at ¶3.

4. The fact is, the Enforcement Bureau, which is solely charged with the burden of proof and the burden of proceeding with respect to the revocation issues, is staffed

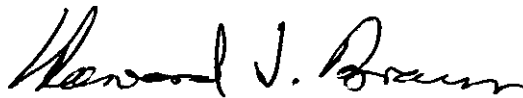
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<sup>4</sup> Importantly, the Petition tacitly recognizes that a power increase for KMAK would not necessarily follow if the KNKS permit were revoked. Indeed, other factors could defeat KMAK's power increase, not the least of which is the fact that the FM Table of Allotments would still contain a Class B allotment for Channel 261 at Coalinga even if KNKS no longer existed.

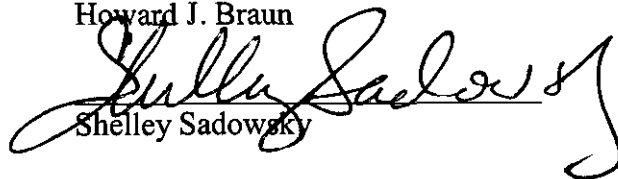
with able, experienced trial counsel, who have already demonstrated in their five sets of Requests for Admissions of Fact served upon the five Parties subject to the revocation proceeding, that they need no assistance in prosecuting the designated issues. Should they wish to call Smith as a witness in the hearing, that certainly may be within their right. However, conferring party status upon Smith now when he has shown that no imminent or direct injury will befall him, and when he has admitted that he cannot provide any more assistance to the agency than competent Bureau counsel is already providing in connection with determining the issues in question, would be both wholly unjustified and unwarranted.

WHEREFORE, for failure to demonstrate good cause for intervention in the above captioned proceeding, the Petition for Leave to Intervene filed by Richard B. Smith should be expeditiously denied.

Respectfully submitted,



Howard J. Braun



Katten Muchin Zavis Rosenman  
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Fax. 202-298-7500

Counsel for William L. Zawila, Avenal  
Educational Services, Inc., Central Valley  
Educational Services, Inc., H.L. Charles  
d/b/a Ford City Broadcasting, Linda Ware  
d/b/a Lindsay Broadcasting, Western Pacific  
Broadcasting Inc.

September 10, 2003

**CERTIFICATE OF SERVICE**

I, Dolly M. LaFuenta, a secretary at Katten Muchin Zavis Rosenman, hereby certify that on this 10th day of September 2003, a copy of the foregoing **JOINT OPPOSITION TO PETITION FOR LEAVE TO INTERVENE** was sent via fax or e-mail to the following:

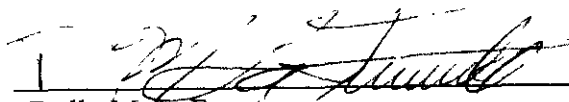
The Honorable Arthur I. Steinberg\*  
Administrative Law Judge  
Federal Communications Commission  
445 Twelfth St., S.W.  
Room 1-C861  
Washington, D.C. 20554

Maureen F. Del Duca, Chief\*\*  
James Shook, Esq.\*\*  
David Janas, Esq.\*\*  
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1300 North 17th Street  
11th Floor  
Arlington, VA 22209

\* Date-stamped copy to be provided via fax on this date or September 11, 2003.

\*\* By e-mail

  
\_\_\_\_\_  
Dolly M. LaFuenta